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IN THE

Supreme Court of the United States

October Term, 1962
No. 322

ALEXANDER T. SPERRY,

Petitioner,

vs.

STATE OF FLORIDA, *ex rel.*, THE FLORIDA BAR,

Respondent.

Brief of American Association of Registered Patent Attorneys and Agents and of Committee for Southern California Patent Practitioners, Not Members of the California Bar, as Amici Curiae.

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By consent of the petitioner and the respondent, the American Association of Registered Patent Attorneys and Agents, and the Committee for Southern California Patent Practitioners, Not Members of the California Bar, file this Brief as *amici curiae*.

Interest of the Amici Curiae.

The *amici curiae* have a vital interest in this case. They are entirely composed of duly qualified patent practitioners who have been formally admitted to prac-

tice by the United States Patent Office. Their right to continue such practice is threatened by the decision of the Florida Court which denies to similarly qualified individuals, not members of the Florida Bar, the right to carry on such practice in Florida.

Introduction.

We have read the Petition filed herein and concur in everything set forth therein. We also respectfully request that the Court consider the following additional facts and arguments.

Reasons for Granting the Writ.

1. The decision of the Florida Court deprives many individuals, other than the petitioner, of the right to represent applicants in the preparation and prosecution of applications in the United States Patent Office. This right has been granted by the Commissioner of Patents under the authority of Congress, pursuant to Article I, Section 8, Clause 8 of the Constitution of the United States.[1] This right has been recognized explicitly by a number of states,[2] and has also been at least acquiesced in, if not recognized, for many years in Florida.

Florida is the only state which has deprived patent practitioners, who are not members of the Bar of the State in which they practice, of their right to prepare and prosecute applications in the Patent Office.

As stated in the Petition, pages 12 and 13, the rights of some 3,307 patent practitioners throughout

[1]Petition, p. 22.

[2]Petition, pp. 15-22.

the country will remain threatened until the question involved is determined by this Court. Included among the 3,307 patent practitioners so affected are approximately 115 patent practitioners in Southern California alone who are not members of the California Bar.

Furthermore, prior to the Florida decision individuals admitted to practice by the United States Patent Office were entitled to carry on that practice in any state or in the District of Columbia, but always subject to supervision by the Commissioner of Patents.[3] Under the Florida doctrine that each state may superimpose its own restrictions upon the established requirements of the United States Patent Office, patent practitioners, whether or not they are members of the Bar of the State in which they practice, would be severely limited in their right to continue the practice of their profession should they move to another state.

A very large number of individuals other than patent practitioners are also adversely affected by the Florida decision.[4] For example:

(1) Certified public accountants in representing clients in tax matters before Federal Agencies.

(2) Qualified lay practitioners licensed to practice before the Interstate Commerce Commission and other Federal Agencies, and

(3) The many clients of patent practitioners, certified public accountants and other qualified lay practitioners.

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[3]Petition, Appendix A, pp. 9-11.

[4]Petition, pp. 13-15.

2. As stated on page 22 of the Petition, the decision of the Florida Supreme Court is clearly erroneous in that it is an improper attempt by a state to exercise control in an area preempted by the Federal Government.

Admission to practice before the Patent Office is strictly supervised by the Commissioner of Patents as authorized by Congress under power granted by the Constitution. Applicants who provide satisfactory proof of good moral character and skill in engineering, scientific and patent matters, are given a written examination. Lawyers and non-lawyers are subject to the same requirements and examination for admission to practice, and are entitled to perform the same acts in the United States Patent Office when duly registered.[5]

The Ohio Court of Appeals, Franklin County, in the cases of *Battelle Memorial Institute v. Green, et al.* and *In re Battelle Memorial Institute,* 133 U. S. P. Q. 49,[6] in holding that a state does not have the power to forbid a duly registered non-attorney to practice within the state before the Patent Office solely because he is not a member of the bar of that state, held, at pages 53-54 as follows:[7]

> "Were the courts of each state to control practice before the United States Patent Office, thus usurping a right to control that which they cannot authorize in the first instance, by considering it to constitute the practice of law within their state; then the courts of the 50 states, by ignor-

[5]Petition, pp. 22-23.

[6]For Opinion, see Petition, Appendix C, pp. 34-52.

[7]Petition, Appendix C, p. 45.

ing the provisions of Article VI of the United States Constitution, supra, could render the provisions of Congress in regard to practice before the Patent Office as enacted under the provisions of Article I, Section 8, of the United States Constitution, supra, a nullity.

* * * * *

"For the reasons set forth, we conclude that control of practice before the U. S. Patent Office is a superior right vested exclusively by the United States Constitution and by acts of Congress in the Commissioner of Patents, subject to appeal to the federal courts, and the state courts, by virtue of Article VI of the United States Constitution, are bound thereby and precluded from interfering."

Also the local rules of many United States District Courts provide that members of the Bar are eligible for admission to practice generally in the United States District Court without being a member of the Bar of the State in which the United States District Court is located.[8]

Furthermore, the Supreme Court of the State of California in the case of *In re McCue*, 211 Cal. 57, provides firm support for the *Battelle* cases in recognizing that the Federal Courts may establish their own rules as to admission and professional conduct, and that the individual states have no power to regulate such practice. In holding that an attorney not a mem-

[8]See local rules of the following District Courts: Connecticut, Hawaii, Illinois (E. D.) (N. D.) (S. D.), Indiana (N. D.) (S. D.), Maine, Maryland, Massachusetts, Montana, New Mexico, New York (S. D.), Ohio (N. D.) (S. D.), Oklahoma (E. D.) (N. D.) (W. D.), North Dakota, South Dakota, Tennessee (W. D.), Vermont, Washington (E. D.) (W. D.).

ber of the California Bar did not violate any California law by practicing in the Federal Courts in California under a license so to do, the Court said, in part, as follows at page 66:

> "Appellant admits that since coming to California under a license so to do he has frequently appeared in the federal courts of this district in the trial of cases. He stated to the committee that he had acted as attorney in some twenty different cases in said federal courts. In our opinion this was not a violation of any law of this state. The State Bar Act and other statutes enacted for the purpose of regulating the practice of law in this state are applicable to our state courts only. The federal courts are governed entirely by federal enactment and their own rules as to admission and professional conduct. *This state, should it attempt, and we do not think it has, to regulate the practice of law in the federal courts or to place any restrictions or limitations upon the persons who might appear before the federal courts within this state, would be acting entirely without right and beyond its jurisdiction.* * * *" (Emphasis added.)

Conclusion.

For the reasons set forth above, the *amici curiae* urge that the petition for a writ of certiorari should be granted.

Dated at Los Angeles, California, this 5th day of September, 1962.

Respectfully submitted,

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Attorney for Amici Curiae.